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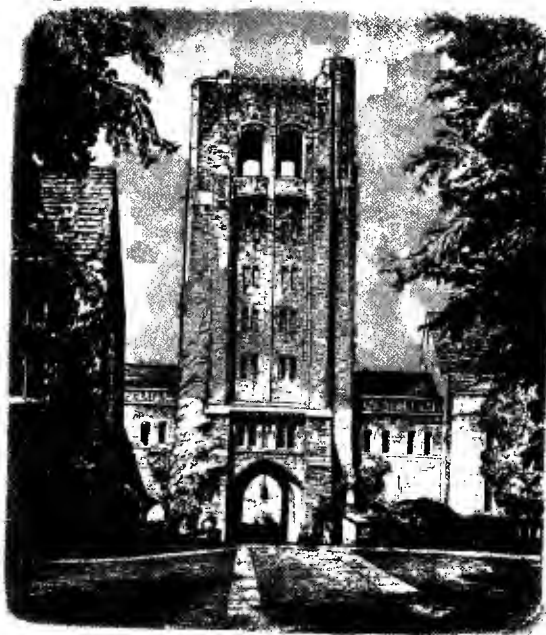
**EFFECTIVE SUBSTITUTES
FOR INCORPORATION**

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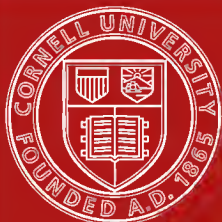
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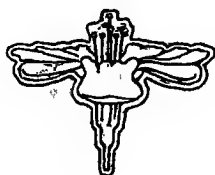


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Declarations of Trust as Effective Substitutes for Incorporation



BY JOHN H. SEARS, OF THE ST. LOUIS BAR
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MISSOURI" and "THE FEDERAL CORPORA-
TION TAX ANNOTATED"



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DECLARATIONS OF TRUST AS EFFECTIVE SUBSTITUTES FOR INCORPORATION.

“MASSACHUSETTS LAND TRUSTS.”

1. Introduction.
2. Comparison of Corporate Attributes and those of Trust Estates.
3. Advantages of the Trust Method over Incorporation.
4. Form of Declaration of Trust formed to hold Real Estate.
5. Form of Declaration of Trust formed to handle Personal Property.

1. **Introduction.**—The decision of the United States Supreme Court in the consolidated case of *Eliot v. Freeman et al.*, and *Maine Baptist Missionary Convention v. Cotting et al.*, 31 Sup. Ct. Rep. 360 (1911), holding that the so-called Massachusetts Trusts are not subject to the Federal excise tax on corporations, has emphasized the importance of this method of conducting business as compared with incorporation. The laws of Massachusetts do not permit of incorporation for the purpose of holding or dealing in real estate, except by special charter, and as special charters are difficult to secure, the best legal talent was soon impressed into the service of devising a means of affording the usual advantages belonging to a corporation without the authority of any legislative act. A method of placing the property in the hands of trustees, who held the legal title and issued certificates, similar to shares of stock, to the

cestuis qui trust, showing the interest owned by each, possessed nearly all the advantages desired. Its efficiency was soon appreciated. At first applied to real estate, they became and are still known as the "Massachusetts Land Trusts." Their advantages so appealed to others in Massachusetts who were acquainted with them that they applied them to the holding of personal property, and a declaration of trust for this purpose, known as "The Massachusetts Electric Companies," is set forth in this book. We understand that this instrument was drawn by Richard Olney, one time Attorney General and later Secretary of State of the United States. As these trusts are effected under the common law, it is apparent that organizers outside of Massachusetts may profit by the examples afforded. Increasing restrictions and regulations imposed upon corporations invite attention to methods other than corporate. Several of the States provide for the organization of "joint stock companies and associations," in addition to incorporation.

Pennsylvania, Act of June 2, 1874;
Virginia, Act of March 2, 1875;
Michigan, Compiled Laws, 1897, Ch. 160;
New Jersey, General Statutes, 1896, p. 2240;
Ohio, General Code, 1910, Sec. 8059;
New York, "Joint Stock Association Laws," Consolidated Laws of N. Y. (1909), p. 1873-1876.

While these joint stock companies have an artificial entity, they do not provide against individual liability as does incorporation. They possess some of the characteristics of corporations and some of the characteristics of co-partnerships. However, they are organized under enabling statutes which enlarge the privileges possessed at common law, and they are, therefore, subject to State regulations, which may be equally burdensome to those imposed upon corporations. An organization *under the common law*, with no special privilege or franchise from legislative authority, is the organization that can do the same acts as

an individual, with no further restrictions than are placed upon individuals. Such an organization is afforded by the declarations of trust herein set forth.

2. Comparison of Corporate Attributes and those of Trusts.—A comparison of the usual corporate advantages and the method of equaling or approaching them, arrived at in the declarations of trust for this purpose, will be noted as follows:

Advantages of Incorporation.

1. CONTINUED EXISTENCE.
(Perpetual or a certain number of years.)

2. LIMITED INDIVIDUAL LIABILITY.

Corresponding Provision in Trust Agreements.

1. The trust continues for twenty years after the death of the last surviving original subscriber. This prevents violation of the rule against perpetuities. The agreement provides that the death of a shareholder merely entitles his legal representatives to a new certificate. The shareholders have no right to call for partition or division of the property.

2. The liability of the shareholders to the organization for assessments is limited by the terms of the agreement. As to third parties, the trustees are required to provide in their contracts that only property in their hands as trustees shall be answerable.

Hussey v. Arnold et al., 185 Mass. 203 (1904).

Whether there is an individual liability for torts and implied contracts is apparently undecided at this writing (October, 1911). This, however, would not be important, except in case of insolvency of the organization.

3. THE EASE WITH WHICH THE OWNERS OF SHARES OF STOCK MAY DISPOSE OF THEM BY WILL, SALE, OR OTHERWISE.

3. The trustees issue certificates for the number of shares to which each is entitled. These certificates have a par value, entitle the holder to one vote for each share, and are transferable on the books of the trustees.

4. THE SAFETY AND CONVENIENCE OF REGULAR MEETINGS AND OF CONDUCTING BUSINESS THROUGH THE AUTHORITY OF A BOARD OF DIRECTORS OF LIMITED AND DEFINED POWERS.

4. The shareholders meet annually, and they have such special meetings as may be necessary. The shareholders, at such meetings, fill vacancies in the number of trustees, and may depose any or all of the trustees and elect others. The trustees have exclusive management; under the terms of the trust, they may borrow money and mortgage the assets, and perform other acts, practically the same as directors of a corporation.

5. BRINGING AND DEFENDING LITIGATION IN THE CORPORATE NAME AND ENTITY.

5. Same rules as to parties and procedure at law and in equity as are applicable to all trust estates.

6. BROAD POWERS. HOLDING COMPANIES, ETC.

6. The powers of such an organization may be broader than most corporations, as it may provide for whatever any individual may do. Ownership of stocks in incorporated companies may be provided for.

3. Advantages of the Trust Method Over Incorporation.

1. Taxation peculiar to corporations, as, for example, Federal excise tax (*Eliot v. Freeman et al.*, 31 Sup. Ct. Rep. 360) and state organization and franchises taxes are avoided.

2. Reports required of corporations need not be filed.

3. The trustees do not have to comply with the foreign corporation laws of various States.

4. There is no legal obligation to maintain the capital and refrain from paying dividends out of capital.

5. As shares of stock in corporations are personal property in the hands of the owner, there are often two taxes on the same property, first against the corporation and then against the owner of the stock. A *cestui qui trust*, under these trust agreements, has merely an equitable interest in the property.

6. The interests of *cestuis qui trust* are well protected by courts of equity. The power to secure information as to the actions of the trustees and the status of the trust fund is, no doubt, superior to the rights and remedies of stockholders in corporations.

7. Dissolution may be effected without formalities required of corporations.

4. Form of Declaration of Trust Formed to Hold Real Estate.

AN AGREEMENT AND DECLARATION OF TRUST made by the subscribers, this 14th day of April, 1894, for the purpose of purchasing certain real estate known as the Tremont House Estate and an adjoining property situated on Tremont and Beacon Streets and Tremont Place, in Boston.

1. The trustees under this agreement are authorized as such trustees to purchase said estates and any existing leases thereto, and to proceed to the erection of a new building as soon as practicable, and may as such trustees make all necessary contracts and agreements for such purchase and for such new building, including any agreement they may think advisable for straightening or altering boundaries, and may if they deem expedient for the adjustment of boundaries acquire additional adjoining estates or release portions of the trust estate, and may make leases of the property or any part thereof held by them on such terms as they may think best, but they shall make no lease for a term of more than five years or for an annual rent of more than \$10,000, unless authorized by vote of the shareholders, except that they may make a lease of certain portions of said building to one tenant for the term of not more than twenty years and at an annual rental of not less than \$24,500. After the new building is completed the trustees shall incur no debt or liability except such as may be incidental to the management of the property held by them, and then only for an amount not exceeding in the aggregate at any one time \$20,000. The trustees shall have no power to bind the shareholders personally (and in every written contract they shall enter into reference shall be made to this declaration of trust), and the person or corporation contracting with the trustees shall look to the funds and property of the trust for the payment under such contract or for the payment of any debt, mortgage, judgment, or decree, or of any money

that may otherwise become due or payable by reason of the failure on the part of said trustees to perform such contracts in whole or any part, and neither the trustees nor the shareholders present or future in this company shall be personally liable therefor.

2. The title of the trustees shall be "Trustees of the Tremont Building," and any property conveyed to them under that description shall be held by them in trust under this agreement.

3. The trustees shall give receipts for installments on subscriptions when paid, and on the payment of the last installment shall issue certificates in exchange for such receipts in shares of \$100.00 each for each \$100.00 paid. Such receipts and certificates shall be transferable only on the books of the trustees upon surrender thereof, all installments due having first been paid and the acceptance of a receipt or certificate shall make the person named therein a party to this agreement. The term "shareholder" used in this agreement shall mean holder of record of a receipt or a certificate.

4. Interest at the rate of 4 per cent per annum and all taxes and assessments shall be added to the cost of the building and paid semi-annually to the subscribers from the date of their respective payments of subscriptions until the substantial completion of said building. The cost of said building shall also include 1 per cent on the amount of subscriptions procured by Alexander S. Porter and T. Denie Boardman (which shall be paid to them for their services and expenses in promoting this enterprise and procuring subscriptions to this agreement) and also 1 per cent on the gross amount of rental on any lease negotiated by them at the lower floor and basement of said building, and also a reasonable compensation to be paid the trustees for their services rendered during construction.

5. The trustees shall have a reasonable compensation

after construction of building, and shall make such dividends among the shareholders as they may deem expedient.

6. The trustees shall call meetings of the shareholders annually on the third Wednesday of March, and shall report their receipts and expenses for the year ending on the 31st of January preceding. They may call special meetings of the shareholders at any time, and shall do so upon the written request of the holders of one-twentieth of the shares.

7. Notices of meetings, of calls for payments of subscriptions, or for any other purpose, shall be deemed binding upon each subscriber and shareholder if mailed prepaid to the last address given by him to the trustees, or in default thereof, to his last given place of business or abode. Notices of meetings shall be given seven days beforehand, and may be given by advertisement for three successive days in two daily papers published in said Boston, or by mail, at the option of the trustees. In notices of special meetings the purpose therefor shall be stated.

8. Shareholders may vote by proxy. At any annual meeting or special meeting called for the purpose the holders of a majority of the entire number of shares may fill any vacancy existing in the number of trustees, may depose any or all of the trustees and elect others in their place, may authorize a sale or mortgage of the real estate or any part thereof held by trustees, and may alter or amend this agreement. For all other purposes a majority of those shareholders present may decide at such meetings, and ten shareholders or their proxies representing one-fifth of all the shares shall constitute a quorum. No such alteration or amendment of this agreement or deposition or appointment of trustee shall affect any person not having actual notice thereof until recorded in Registry of Deeds for Suffolk County, nor shall any such alteration or amendment or other action affect rights (previously acquired) of any third person. A certificate signed by the chairman of such meeting shall, if countersigned by at least one of the trustees, be conclusive evidence of the regularity of the meeting and

of the vote having been passed by the requisite majority and of all facts stated in such vote or certificate material to title.

9. Any vacancy in the number of trustees may be filled by the remaining trustee until the next annual meeting of the shareholders or special meeting called for the purpose of filling such vacancy. The acting trustee or trustees from time to time shall have all the powers of original trustees. Upon resignation, decease, incapacity, or removal, or vacancy for any cause, the title of the outgoing trustee shall rest in the remaining trustee, and upon the filling of any vacancy by the shareholders as aforesaid the title of the whole trust property shall rest in the new board jointly.

10. No sale or mortgage of the real estate held by the trustees, or any part thereof, shall be made by them unless authorized by vote of the shareholders as provided above, except that the trustees may sell all the trust property at the expiration of the trust in default of action relative thereto by the shareholders.

11. This trust shall not continue in any event longer than twenty years after the death of the last surviving subscriber hereto. The trustees shall not be required to give bond, and each shall be liable only for his own acts, and then only for wilful breach of trust.

12. Any certificate or paper signed by the trustees or any of them or by the shareholders, or a copy of the record of any of their proceedings certified by any one of the trustees which it may be deemed desirable to record in the Registry of Deeds for the County of Suffolk, may be acknowledged by any one of the trustees or parties signing in the manner prescribed for the acknowledgment of deeds in Massachusetts.

13. We the subscribers agree to pay to the trustees the amounts stated against our names, in such sums and at such times as the trustees may require, and in case any subscriber neglects to pay any installment required by the

trustees in twenty days after notice, the amount of his subscription then unpaid may be canceled at the option of the trustees, who may accept another subscriber in his place.

14. The limit of subscriptions hereto shall be the sum of \$2,700,000, and no subscription shall be binding until the total amount reaches the sum of \$1,400,000. It being understood that the remaining \$1,300,000 is to be raised by a mortgage of the said real estate.

15. The first trustees under this agreement shall be Charles E. Cotting and Francis C. Welch, both of said Boston, who signify their acceptance of the trust by subscribing their names thereto. No surety or sureties shall have to be required of any trustee acting hereunder.

CHARLES E. COTTING,

FRANCIS C. WELCH,

Trustees.

<i>Name.</i>	<i>Amount.</i>	<i>Name.</i>	<i>Amount.</i>
Estate of Fred L.			
Ames, by Oliver			
Ames 2d, Samuel			
Carr, Exca.....	\$200,000	H. H. Hunnewell..	\$200,000
B. P. Cheney, By		Henry Lee.....	100,000
B. P. Cheney,		David Sears.....	50,000
Jr., Attorney ...	200,000	Grant Walker.....	60,000
		Etc., etc.	

I, Andrew C. Wheelwright, hereby certify that I was the Chairman of a Special Meeting of the shareholders of the Tremont Building Trust under an Agreement and Declaration of Trust made April 14th, 1894, and recorded with Suffolk Deeds, lib. 2212, Page 210, duly called for the purpose and held at Boston on Tuesday the fifth day of March, A. D. 1901, and that at said meeting the holders of a majority of the entire number of shares passed the following vote, amending said Agreement and Declaration of Trust.

VOTED: That the Agreement and Declaration of Trust dated April 14th, 1894, and recorded with Suffolk Deeds, lib. 2212, Page 210, be and the same hereby is altered and amended as follows: The Trustees under said agreement are authorized to purchase the estate on the westerly corner of Beacon Street and Tremont Place, in Boston, now belonging to Walter J. Otis and numbered six on said Beacon Street, and one and three on said Tremont Place, also the adjoining estate on said Tremont Place now belonging to Isidore B. Raggiotti and numbered five on said Tremont Place, containing together about four thousand, eight hundred and sixty-five square feet, and any existing leases and mortgages thereon, and to proceed to erect thereon a "building of the first class," said real estate when so purchased to be held by the said trustees upon the trusts set forth in said agreement and with the same powers in all respects as if the same had been included within the scope of the original trust, and upon the completion of such building or at any time thereafter said trustees are authorized to issue from time to time such additional stock on such terms as to them shall seem best to pay for said land, the cancellation of leases and mortgages and the construction of such building and any incidental expenses connected therewith.

I further certify that at said meeting the holders of a majority of the entire number of shares passed the following vote:

VOTED: To provide means of paying for the land situated on the westerly corner of Beacon Street and Tremont Place, numbered six on Beacon Street and one, three, and five on Tremont Place, containing together about four thousand,

eight hundred and sixty-five square feet, the cancellation of leases, the discharge of mortgages, and the erection of a building thereon; the trustees are authorized to borrow from time to time such money as in their opinion is necessary for those purposes, and to give the notes or obligations of the trustees therefor on such time and bearing interest at such rate as to the trustees shall seem best, which notes shall be enforceable against any property now or hereafter held under the agreement of trust, and to secure payment for such notes or obligations by giving a power of sale, mortgage or mortgages in such form as they may deem expedient covering said land and buildings. No mortgagee, however, to be under any obligation to see to the application of the money lent.

Witness my hand this 30th day of March, A. D. 1901.

ANDREW C. WHEELWRIGHT.

Countersigned:—

CHARLES E. COTTING,

FRANCIS C. WELCH,

Trustees of Tremont Building,

Under an Agreement and Declaration of
Trust made April 14th, 1894, and re-
corded with Suffolk Deeds, lib. 2212,
Page 210.

Commonwealth of Massachusetts, }
Suffolk. } ss.

Then personally appeared the above named Charles E. Cotting and Francis C. Welch, and acknowledged the foregoing instrument by them subscribed to be their free act and deed as Trustees.

Before me,

ERNEST DANE,

Recorded:—

Justice of the Peace.

April 2d, 1901, one o'clock and
twenty-eight minutes P. M.

5. Form of Declaration of Trust Formed to Handle Personal Property.

Agreement and Declaration of Trust of the

MASSACHUSETTS ELECTRIC COMPANIES.

Dated : June 29th, 1899.

THIS AGREEMENT, made this twenty-ninth day of June, A. D. 1899, by and between E. Rollins Morse, Henry Russell Shaw, Robert W. Emmons, 2d, and George W. Parker, co-partners under the firm name of E. Rollins Morse and Brother, and William A. Tucker, S. Reed Anthony, Philip L. Saltonstall and Nathan Anthony, co-partners under the firm name of Tucker, Anthony and Company, together with their assigns, herein designated as the "SUBSCRIBERS," and Gordon Abbott, Charles Francis Adams, 2d, S. Reed Anthony, John N. Beckley, Amos F. Breed, Everett W. Burdett, Charles E. Cotting, Eugene N. Foss, Walter Hunnewell, Stillman F. Kelley, E. Rollins Morse, Richard Olney, Percy Parker, S. Endicott Peabody, and Philip L. Saltonstall, together with their successors, herein designated as the "TRUSTEES," witnesseth :

That

WHEREAS the subscribers propose to transfer, assign, and deliver to the Trustees, under the designation of "MASSACHUSETTS ELECTRIC COMPANIES," certain shares of the capital stock and other securities of sundry street railways and other companies and contracts to purchase the same and also other property, as shown in a schedule identified by the signatures of the parties hereto and filed with the Trustees; and the Trustees for the purpose of defining the interests of the subscribers and their assigns in such property, have agreed to issue to the Subscribers negotiable certificates for two hundred and forty thousand

(240,000) shares, of which one hundred and twenty thousand (120,000) shall be preferred and one hundred and twenty thousand (120,000) shall be common, each share to be expressed of the par value of one hundred (100) dollars, and all of said shares to be issued to the Subscribers in the following proportions, viz:

To said E. Rollins Morse and Brother, or order, 60,000 preferred shares and 60,000 common shares; to said Tucker, Anthony & Company, or order, 60,000 preferred shares and 60,000 common shares.

NOW, THEREFORE, the Trustees hereby declare that they will hold said property so to be transferred to them, as well as all other property which they may acquire as such Trustees, together with the proceeds thereof, in trust, to manage and dispose of the same for the benefit of the holders from time to time, of the certificates of shares issued hereunder, according to the priorities expressed in said certificates, and in the manner and subject to the stipulations herein contained, to-wit:

FIRST. The Trustees, in their collective capacity, shall be designated, so far as practicable, as the "MASSACHUSETTS ELECTRIC COMPANIES," and under that name shall, so far as practicable, conduct all business and execute all instruments in writing, in performance of their trust.

SECOND. The Trustees shall always be fifteen in number, and of the Trustees herein mentioned by name, S. Reed Anthony, Everett W. Burdett, E. Rollins Morse, S. Endicott Peabody, and Philip L. Saltonstall, shall hold office until the first annual meeting of the shareholders; Gordon Abbott, John N. Beckley, Amos F. Breed, Walter Hunnewell, and Stillman F. Kelley, shall hold office until the second annual meeting of the shareholders; and Charles Francis Adams, 2d, Charles E. Cotting, Eugene N. Foss,

Richard Olney, and Percy Parker, shall hold office until the third annual meeting of the shareholders; except that said Trustees, as well as any Trustees hereafter elected, shall in all cases hold office until their successors have been elected and accepted this trust.

The shareholders shall, at each annual meeting, or adjournment thereof, elect five Trustees to serve for the term of three years next ensuing. In case of the death, resignation, or inability to act of any of said Trustees, the remaining Trustees shall accept any resignation and fill any vacancy for the unexpired term. As soon as any Trustees elected by the shareholders or by the remaining Trustees to fill a vacancy have accepted this trust, the trust estate shall rest in the new Trustees or Trustee, together with the continuing Trustees, without any further act or conveyance.

THIRD. The Trustees shall hold the legal title to all property at any times belonging to their trust, and shall have and exercise the exclusive management and control of the same; they shall assume all contracts for and obligations and liabilities in connection with or growing out of the purchase of the stock or securities assigned to them by the Subscribers and mentioned in the annexed schedule, and to the extent and value of such stock and securities, but not personally, shall agree to hold the Subscribers and any person associated or acting with them harmless and indemnified from and against any loss, cost, expense, or liability upon, by reason of, or in connection with, any such contract, obligation or liability; they may adopt and use a common seal; they shall have power to vote in person or by proxy upon all shares of stock at any time belonging to the trust, and to collect, receive, and receipt for the dividends thereon, and may contract with each or any of the controlled companies in respect of any matter or matters relating to the operation of the road or the conduct of the business of any such company or companies, to collect, sue for, receive and receipt for all sums of money at any time coming due to

said trust; to employ counsel to begin, prosecute, defend and settle suits at law, in equity or otherwise, and to compromise or refer to arbitration any claims in favor of or against the trust; they may also, with the consent of not less than ten of their number given at a meeting called for that purpose, but not otherwise, exchange, upon such terms as may be agreed upon, the stock or securities held by them in any corporation for the stock or securities of any other corporation, taking over the property of such corporation by consolidation or otherwise; and with such consent but not otherwise, may loan money to any corporation of which they may own a majority of the capital stock, and may subscribe for or acquire additional stock or the securities or obligations of such corporations; and with such consent, but not otherwise, may subscribe for, purchase, and acquire shares in the capital stock of any corporation (1) owning or operating railways or railroads, or engaged in the business of transporting merchandise, mails or express matter, or (2) engaged in whole or in part in supplying light, heat, power or other public service, or (3) manufacturing, selling or repairing machines, equipments, supplies or other articles used by corporations of either or both of the classes above named, or (4) engaged in the business of insuring corporations of any or all of the foregoing classes against loss by fire or casualty, or (5) engaged in the business of advertising in the cars or upon the premises of railways, or railroad companies; and with such consent, but not otherwise, may borrow money for any of the purposes aforesaid. With the consent of the holders of at least two-thirds of each class of shares outstanding, at a meeting called for that purpose, but not otherwise except as herein otherwise provided, the Trustees may sell, mortgage, pledge, encumber, or dispose of any shares or stock securities or other property from time to time held by them upon such terms and for such purposes as the shareholders at such meeting may approve.

So far as strangers to this trust are concerned, a resolution of the Trustees authorizing a particular act to be done

shall be conclusive evidence in favor of such strangers that such act is within the powers of the Trustees, and no purchaser from the Trustees shall be bound to see the application of the purchase money or other consideration paid or delivered by or for said purchaser to or for said Trustees.

FOURTH. Stated meetings of the Trustees shall be held at least once a month, and other meetings shall be held from time to time upon the call of the President or any three of the Trustees. A majority of the Board constitutes a quorum, and the concurrence of all the Trustees shall not be necessary to the validity of any action done by them, but the wish of a majority of the Trustees present and voting at any meeting shall be conclusive except as hereinbefore specifically provided. The Trustees may make, adopt, amend, or repeal such by-laws, rules, and regulations, not inconsistent with the terms of this instrument, as they may be deemed necessary or desirable for the conduct of their business and for the government of themselves and their agents, servants, and representatives.

FIFTH. The Trustees shall annually elect from among their number a President and Vice-President of the Board, and shall also annually elect a Treasurer and Secretary, and they shall have authority to appoint such other officers, agents, and attorneys as they may from time to time deem necessary or expedient for the conduct of their business. They shall have authority to accept resignations and to fill any vacancy in the office of President, Vice-President, Treasurer, or Secretary, for the unexpired term; and shall likewise have authority to elect temporary officers to serve during the absence or disability of regular officers. The President, Vice-President, Treasurer, and Secretary shall have the authority and shall perform the duties usually incident to those offices in the case of corporations, so far as applicable thereto, and shall have such other authority and perform such other duties as may from time to time be determined by the Trustees. The Trustees shall fix the compensation of any, or all officers and agents whom they

may appoint, and are likewise authorized to pay to themselves such compensation for their own services as they may deem reasonable. The Trustees shall also appoint from among their number an Executive Committee of three or five persons, to whom they may delegate such of the powers herein conferred upon the Trustees as they may deem expedient, except so far as those matters are concerned in which the concurrent action of at least ten Trustees is required.

The Trustees shall not be liable for errors of judgment either in holding property originally conveyed to them or in acquiring and afterward holding additional property, nor for any loss arising out of any investment, nor for any act or omission to act performed or omitted by them in the execution of this trust in good faith, nor shall they be liable for the acts or omissions of each other or of any officer, agent, or servant appointed by or acting for them, and they shall not be obliged to give any bond to secure the due performance of this trust by them.

SIXTH. Shares hereunder shall be of the par value of one hundred (\$100.00) dollars each, and shall be divided into preferred and common shares. The preferred shares shall entitle the holder to accumulative semi-annual dividends at the rate of 4 per centum per annum, and no more, the same to be paid or set apart before any dividend shall be paid or set apart for the common shares; and in case of liquidation, the proceeds of the liquidation shall be first applied to the payment to the holder of preferred shares, of the sum of one hundred dollars per share and any accrued and unpaid dividends thereon, and the balance remaining thereafter shall be divided among the holders of common shares in proportion to their holdings. As evidence of the ownership of said shares, the Trustees shall cause to be issued to each shareholder a negotiable certificate or certificates, which certificates shall be in form following, to-wit:

(Form of Certificates of Common Shares.)

(Form of Certificates of Preferred Shares.)

SEVENTH. In addition to the shares to be originally issued to the subscribers as hereinbefore provided, the Trustees shall issue and sell, at public or private sale, upon such terms and for such prices as they may deem expedient, such additional preferred or common shares, or both, as may be necessary to provide means to pay for the stock of the New Bedford, Middleborough, and Brockton Street Railway Company, the contract for the purchase of which is to be assigned to and assumed by the Trustees.

Except as aforesaid, no share shall be issued by the Trustees in excess of the amount to be originally issued to the Subscribers, as hereinbefore stated. But the Trustees may from time to time, for the purpose of acquiring means for the acquisition of additional property or otherwise accomplishing the purpose of this trust, with the consent of at least two-thirds of the preferred stockholders and two-thirds of the common shareholders, present and voting, at any meeting called for that purpose, issue and dispose of additional shares upon such terms and in such manner as the shareholders at such meeting may determine.

In case of the loss or destruction of any certificates of shares issued by the Trustees, the Trustees may, under such condition as they may deem expedient, issue a new certificate or certificates in the place of the one lost or destroyed.

EIGHTH. The Trustees may from time to time declare and pay dividends out of the net earnings from time to time received by them, but the amount of such dividends and the payment of them shall be wholly in the discretion of the Trustees; except that the dividends on the preferred shares shall be payable semi-annually on the first days of June and December in each year, at the rate of 4 per cent per annum, and no more, and shall be cumulative, and said semi-annual dividends shall be paid or set apart before any dividends are paid on the common shares.

NINTH. The fiscal year of the Trustees shall end on the thirteenth day of September in each year. Annual meetings for the election of five Trustees and for the transaction of other business, shall be held in Boston, on the Wednesday following the first Monday of November, in each year, beginning with the year 1900, of which meetings notice shall be given by the Secretary, by mail, to each shareholder, at his registered address, at least ten days before said meeting.

Special meetings of the shareholders may be called at any time, upon seven days' notice given as above stated, when ordered by the President or Trustees. At all meetings of the Shareholders, each holder of shares, whether preferred or common, shall be entitled to one vote for each share held by him, and any shareholder may vote by proxy.

No business shall be transacted at any special meeting of the shareholders unless notice of such business has been given in the call for the meeting.

No business except to adjourn shall be transacted at any meeting of the Shareholders unless the holders of a majority of all the shares outstanding are present in person or by proxy.

TENTH. The death of a Shareholder or Trustee during the continuance of this trust shall not operate to determine the trust, nor shall it entitle the legal representative of the deceased shareholder to an accounting, or to take any action in the courts, or elsewhere, against the Trustees; but the executors, administrators, or assigns of any deceased shareholder shall succeed to the rights of said decedent under this trust, upon surrender of the certificate for the shares owned by him.

The ownership of shares hereunder shall not entitle the shareholders to any title in or to the trust property whatsoever, or right to call for a partition or division of the same, or for an accounting.

ELEVENTH. The Trustees shall have no power to bind the shareholders personally, and the subscribers and their assigns and all persons or corporations extending credit to, contracting with, or having any claim against the Trustees shall look only to the funds and property of the trust for payment under such contract or claim, or for the payment of any debt, damage, judgment, or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the shareholders, present or future, shall be personally liable therefor.

In every written order, contract, or obligation which the Trustees shall give or enter into, it shall be the duty of the Trustees to stipulate that neither the Trustees nor the Shareholders shall be held to any personal liability under or by reason of such order, contract, or obligation.

TWELFTH. This trust shall continue for the term of twenty-one years, at which time the then Board of Trustees shall proceed to wind up its affairs, liquidate its assets, and distribute the same among the holders of preferred and common shares according to the priorities hereinbefore expressed, **PROVIDED, HOWEVER,** that if prior to the expiration of said period, the holders of at least two-thirds of the shares then outstanding shall, at meeting called for that purpose, vote to terminate or to continue this trust, then said trust shall either terminate or continue in existence for such further period as may then be determined.

For the purpose of winding up their affairs and liquidating the assets of the trust, the then Board of Trustees shall continue in office until such duties have been fully performed.

This agreement and declaration of trust may be amended or altered except as regards the liabilities of the Trustees at any annual or special meeting of the shareholders with the consent of the holders of at least two-thirds of the shares of each class then outstanding; pro-

vided notice of the proposed amendment or alteration shall have been given in the call for the meeting; and in case of such alteration or amendment, the same shall be attached to and made a part of this agreement, and a copy thereof shall be filed with the OLD COLONY TRUST COMPANY.

IN WITNESS WHEREOF, the said Gordon Abbott, Charles Francis Adams, 2d, S. Reed Anthony, John N. Beckley, Amos F. Breed, Everett W. Burdett, Charles E. Cotting, Eugene N. Foss, Walter Hunnewell, Stillman F. Kelley, E. Rollins Morse, Richard Olney, Percy Parker, S. Endicott Peabody, and Philip L. Saltonstall, Trustees, hereinbefore mentioned, have hereunto set their hands and seals, in token of their acceptance of the trust hereinbefore mentioned, for themselves and their successors, and the said E. Rollins Morse, Henry Russell Shaw, Robert W. Emmons, 2d, and George W. Parker, as co-partners under the firm name of E. Rollins Morse and Brothers, and William A. Tucker, S. Reed Anthony, Philip L. Saltonstall, and Nathan Anthony, as co-partners under the firm name of Tucker, Anthony and Company, Subscribers, have hereunto set their hands and seals, in token of their assent to and approval of said terms of trust, for themselves and their assigns, the day and year first above written.

(Signed)

E. Rollins Morse,
Henry Russell Shaw,
Robert W. Emmons, 2d,
George W. Parker,

} CO-PARTNERS UNDER THE
FIRM NAME OF E. ROLLINS
MORSE & BROTHERS.

William A. Tucker,
S. Reed Anthony,
Philip L. Saltonstall,
Nathan Anthony,

} CO-PARTNERS UNDER THE
FIRM NAME OF TUCKER,
ANTHONY & COMPANY.

Gordon Abbott,
Charles F. Adams, 2d,
S. Reed Anthony,
John N. Beckley,
Amos F. Breed,
Everett W. Burdett,
Charles E. Cotting,
Eugene N. Foss,
Walter Hunnewell,
Stillman F. Kelley,
E. Rollins Morse,
Richard Olney,
Percy Parker,
S. E. Peabody,
Philip L. Saltonstall.

Agreement and
Declaration of Trust of the

MASSACHUSETTS ELECTRIC COMPANIES.

For three years :

Richard Olney,	Eugene N. Foss,
Charles E. Cotting,	Percy Parker,
Charles Francis Adams, 2d.	

For two years :

Gordon Abbott,	John N. Beckley,
Amos F. Breed,	Stillman F. Kelley,
Walter N. Hunnewell.	

For one year :

S. Endicott Peabody,	Everett W. Burdett
S. Reed Anthony,	Philip L. Saltonstal
E. Rollins Morse.	

OFFICERS.

President—Ames F. Breed.

Vice-President—Charles E. Cotting.

Secretary—Everett W. Burdett.

Treasurer—Joseph H. Goodspeed.

General Manager—P. F. Sullivan.

Executive Committee:

Gordon Abbott, Chairman,

Charles F. Adams, 2d,

Eugene N. Foss,

Percy Parker,

Philip L. Saltonstall.

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